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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,354	08/28/2003	Robert Unglert	UNGLERT 1	6697
7590 03/07/2005		EXAMINER		
COLLARD & ROE, P.C.		NORDMEYER, PATRICIA L		
1077 Northern Boulevard		ART UNIT		
Roslyn, NY 11576-1696		PAPER NUMBER		
		1772		

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/650,354

**Applicant(s)**

UNGLERT, ROBERT

**Examiner**

Patricia L. Nordmeyer

**Art Unit**

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 21-24 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/03, 12/03, 2/05</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1 - 20, drawn to a multi-layer label and a receptacle comprising a multi-layer label, classified in class 428, subclass 40.1.
  - II. Claims 21 - 24, drawn to a method for producing the multi-layer label, classified in class 156, subclass 60.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions Group II, claims 21 - 24 and Group I, claims 1 - 20 are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made using a materially different process such as using a tongue and slit to hold the top label attached to the bottom label while allowing the top label to be removed from the bottom label without the presence of an adhesive material.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Fred Dorchak on February 34, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1 - 20.

Art Unit: 1772

Affirmation of this election must be made by applicant in replying to this Office action. Claims 21 - 24 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. Claims 1 – 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “a first adhesive layer for attaching the multilayer label to an object to be labeled, as well as a first non-adhesive region, such that a predominantly non-adhesive sheet is formed” in claim 1 is unclear, which renders the claim vague and indefinite. It is unclear from both the claim language and specification what is meant having an adhesive region while forming a predominantly non-adhesive sheet. How can the sheet be both adhesive and non-adhesive?

The phrase “a second adhesive layer as well as a second non-adhesive region such that a predominantly non-adhesive sheet is formed” in claim 1 is unclear, which renders the claim vague and indefinite. It is unclear from both the claim language and specification what is meant

Art Unit: 1772

having an adhesive region while forming a predominantly non-adhesive sheet. How can the sheet be both adhesive and non-adhesive?

The phrase “wherein the top label comprises a section which protrudes beyond the bottom label” in claim 1 is unclear, which renders the claim vague and indefinite. It is unclear from the claim language and specification what is meant by protrudes beyond the bottom label. Is the section at a different height? Wider than the label? Longer than the label?

The phrase “the punch-outs completely separate the top label” in claim 10 is unclear, which renders the claim vague and indefinite. It is unclear from both the claim language and the specification what is meant by the above phrase. Do the punch-outs extend along the whole length or width of the label? Do the punch-outs cause the top label to be separated from the bottom label? What do the punch-outs separate the top label from?

The phrase “a first adhesive layer for attaching the multilayer label to an object to be labeled, as well as a first non-adhesive region, such that a predominantly non-adhesive sheet is formed” in claim 18 is unclear, which renders the claim vague and indefinite. It is unclear from both the claim language and specification what is meant having an adhesive region while forming a predominantly non-adhesive sheet. How can the sheet be both adhesive and non-adhesive?

Art Unit: 1772

The phrase “a second adhesive layer as well as a second non-adhesive region such that a predominantly non-adhesive sheet is formed” in claim 18 is unclear, which renders the claim vague and indefinite. It is unclear from both the claim language and specification what is meant having an adhesive region while forming a predominantly non-adhesive sheet. How can the sheet be both adhesive and non-adhesive?

The phrase “wherein the top label comprises a section which protrudes beyond the bottom label” in claim 18 is unclear, which renders the claim vague and indefinite. It is unclear from the claim language and specification what is meant by protrudes beyond the bottom label. Is the section at a different height? Wider than the label? Longer than the label?

Claims 2 – 17, 19 and 20 are also rejected under 35 U.S.C. 112 2<sup>nd</sup> paragraph due to the dependency on the above rejected claims.

Correction/clarification is required.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 1772

8. Claims 1 – 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Sellars (USPN 6,613,410).

Sellars discloses a multilayer label (Figure 5, #110 and Column 4, lines 1 – 7) comprising at least one bottom label (Figure 5, #112) and a top label (Figure 5, #114), which at least partly covers said bottom label (Figure 6, #110), wherein the bottom label at its side facing away from the top label comprises a first adhesive layer for attaching the multilayer label to an object to be labeled as well as a non-adhesive region to form a predominantly non-adhesive sheet (Column 3, lines 50 – 54), wherein the top layer comprises a second adhesive layer as well as a second non-adhesive region to form a predominantly non-adhesive sheet (Column 4, lines 38 – 45) wherein the top label comprises a section which protrudes beyond the bottom label (Column 6, lines 32 – 33) as in claims 1 and 18. Also as claimed in claim 18, a receptacle comprising a multilayer label is disclosed (Figure 6). As in claims 2, 15 and 16, there many embodiments for the adhesive layer: first adhesive layer at least partly overlaps the second adhesive layer, the second adhesive layer comprises a surface area which agrees with the surface area of the first adhesive layer, the layers being arranged so that one covers the other (Column 4, lines 38 – 44) and selective application of adhesive on both the first and second layers (Column 3, lines 50 – 54; Column 4, lines 38 – 44). The protruding section is arranged at the margin of the second non-adhesive section (Figure 4; Figure 7, #430; Figure 9, #630) and may have attachment means for detachable attachment (Figure 10; #740) as in claims 3 and 6. As stated in claims 4, 5, 8 and 17, the label has adhesive rejecting layers formed on both the top and bottom labels where the rejecting layer overlaps the first adhesive layer in order to form areas for printing of indicia

Art Unit: 1772

(Column 9, lines 45 – 52). The bottom label and the top label have a self overlapping arrangement on one receptacle, wherein the length of the multilayer label is greater than the circumference and greater than twice the circumference (Column 4, lines 1 – 8) as stated in claims 7, 19 and 20. Regarding claims 9 – 14, the top label comprises punch outs in the region of the second adhesive layer, wherein said punch-outs are arranged such that they create at least one detachable receipt section, the punch outs completely separate the top layer by perforations for form free standing sections (Column 5, lines 13 – 21; lines 28 – 30), the protruding tab is arranged on the receipt section on top label for gripping (Figure 4; #328).

9. Claims 1, 2, 3, 6, 7, 9 - 12, 16, 18 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Treichel et al. (USPN 5,250,337).

Treichel et al. disclose a multilayer label (Column 1, line 5) comprising at least one bottom label (Column 1, line 20) and a top label (Column 1, line 24), which at least partly covers said bottom label (Column 1, lines 24 - 25), wherein the bottom label at its side facing away from the top label comprises a first adhesive layer for attaching the multilayer label to an object to be labeled as well as a non-adhesive region to form a predominantly non-adhesive sheet (Column 1, lines 21 – 24), wherein the top layer comprises a second adhesive layer as well as a second non-adhesive region to form a predominantly non-adhesive sheet (Column 1, lines 25 – 27) wherein the top label comprises a section which protrudes beyond the bottom label (Column 1, lines 44 – 46) as in claims 1 and 18. Also as claimed in claim 18, a receptacle comprising a multilayer label is disclosed (Column 1, lines 5 – 7). As in claims 2 and 16, there many



Art Unit: 1772

embodiments for the adhesive layer: first adhesive layer at least partly overlaps the second adhesive layer (Column 1, lines 46 – 51) and selective application of adhesive on both the first and second layers (Column 1, lines 23 - 27). The protruding section is arranged at the margin of the second non-adhesive section (Column 1, lines 44 – 46) and may have attachment means for detachable attachment (Column 2, lines 17 – 22) as in claims 3 and 6. The bottom label and the top label have a self overlapping arrangement on one receptacle, wherein the length of the multilayer label is greater than the circumference (Column 1, lines 48 – 51) as stated in claims 7 and 19. Regarding claims 9 – 12, the top label comprises punch outs in the region of the second adhesive layer, wherein said punch-outs are arranged such that they create at least one detachable receipt section (Column 1, line 52 to Column 2, line 3) and the punch outs completely separate the top layer by perforations for form free standing sections (Column 2, lines 18 – 29).

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent Nos. 6,447,014 and 6,660,353 to Seidl disclose different embodiments of multi-layer labels, labels having selective locations of adhesive, removable tag portions, protruding tab and the use of anti-adhesive carrier material, which show the state of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-

Art Unit: 1772


1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer  
Examiner  
Art Unit 1772

*pln*  
pln

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

3/4/05